

11-189

The Secretary of State presents her compliments to Their Excellencies and Messieurs and Mesdames the Chiefs of Mission and has the honor to restate policies and procedures regarding the application of the Foreign Missions Act (“the Act”) concerning the rules and procedures associated with a foreign mission’s acquisition, alteration, use, and disposition of real property in the United States. This note supersedes the sections of the Department's circular diplomatic note No. 09-112, dated August 27, 2009, regarding the topics discussed below.

Pursuant to Section 4305 of the Act, all foreign missions are obligated to notify and obtain the approval of the Department’s Office of Foreign Missions (OFM) **before** finalizing a proposed lease, purchase, sale, or other acquisition or disposition of real property in the United States, undertaken by or on behalf of a foreign mission. In accordance with Section 4305, all such transactions are subject to disapproval by the Department.

This requirement applies to all properties acquired for office or residential use by a foreign government for its diplomatic mission in Washington or career consular posts located throughout the United States and its territories. For some

missions, this requirement may also extend to acquisitions by individual members of the mission or to a foreign government's miscellaneous foreign government offices ("MFGO"). Such missions have been informed of this requirement in a separate diplomatic note.

Absent OFM's approval of a proposed acquisition, use, or disposition of real property, as required by Section 4305 of the Act, foreign governments are advised that their properties would be assumed not to enjoy any otherwise applicable diplomatic or consular privileges and immunities, including inviolability and exemption from real estate taxation.

In addition to the prior notification and approval of all foreign mission leases, purchases, or sale of a new or existing property, the alteration, renovation, addition, or change in use of an existing property are also considered "acquisitions" under the Act and must be submitted to the Department for approval. The Department understands "alteration" to include any type of construction, repair, installation or other work that requires the issuance of a permit from the relevant and authorized local governmental authority. In this regard, missions are reminded that in nearly all cases, diplomatic and consular premises, whether office or residential, must obtain zoning and/or building permits with respect to any property-related activity in which they may engage.

Missions are encouraged to seek the approval of OFM's Office of Property, Tax, Services and Benefits of proposed acquisitions, alterations, or dispositions as early in the process as possible. Missions that obtain the benefit of OFM's experience and advice in the early stages of an acquisition, alteration, or disposition may avoid any unnecessary financial or legal complications.

Missions may request OFM's approval of proposed acquisitions, alterations, or dispositions of real property by delivering a diplomatic note to OFM, which is located in Room 2236 of the Harry S Truman Building ("Main State"). Such diplomatic notes may also be faxed to (202) 736-4145 or sent via electronic mail to OFMProperty@state.gov.

At a minimum, the note should include:

1. The exact address of the property, including apartment, suite, or floor number;
2. The proposed or existing use of the property, i.e., chancery, chancery annex, consulate, consular annex, Chief of Mission residence, staff residence, MFGO, etc.;
3. The proposed transaction, i.e., purchase, lease (including lease term), sale, alteration, or expansion;
4. The inclusion of one of the following statements:
 - a. No part of this property is or will be used for commercial purposes; or

- b. A portion or all of this property is or will be used for commercial purposes and by doing so the mission understands that such use deprives the area used for such purposes of both its inviolability status and eligibility for exemption from property taxation.
 - If a portion or all of a property is or will be used for commercial purposes, missions are required to provide OFM with information detailing the square footage of the premises that is or will be used for commercial purposes.
5. The inclusion of the following statement: This mission acknowledges that it must request and obtain the approval of the Department of State's Office of Foreign Missions prior to changing the use of this property from that which is described in this note.
6. *Alterations* - A description of the proposed alteration or expansion of an existing property, including a listing of the anticipated types of permits needed to complete the project.
7. *Residential* – The name(s) and position title of the intended tenant/resident.
8. *Point of Contact* – The name and contact information of the mission member authorized to discuss the proposed property acquisition with OFM.

After receiving the note described above, the Act allows the Department a period of up to sixty (60) calendar days to review such submissions. Although OFM is normally able to provide a response within a few weeks, the full review

period may be required. Therefore, missions are encouraged to submit the aforementioned request as far in advance as possible.

Prior to receiving a response from OFM to the proposed acquisition or alteration, a mission **may not** enter into a contract or lease agreement, or make any alteration, unless the agreement expressly states that the execution of the agreement is subject to disapproval by the Department of State. The Chiefs of Mission are reminded that significant financial and legal complications may result if this requirement is overlooked.

Unless specifically approved as otherwise, properties acquired by foreign missions for diplomatic or consular purposes are to be used in their entirety for such purposes. Without separately requesting and obtaining OFM approval, properties authorized for diplomatic or consular purposes may not be used, even in part, for any other purpose, such as office space for other governmental organizations, state-owned or private commercial entities, and may not be leased to any other party not affiliated with the mission.

CHANCERY PROPERTIES

Chanceries and chancery annexes are traditionally located in the District of Columbia. On a case-by-case basis, however, the Department will consider other locations in the Washington Metropolitan area.

Chancery Properties in the District of Columbia

For chanceries or chancery annexes located in the District of Columbia, the determination as to whether a proposed site is acceptable, or whether the expansion or alteration of an existing chancery complies with local building codes and regulations, is subject to Section 4306 of the Act. The approval process outlined in that section of the Act addresses the location, expansion, or alteration of the chanceries in the District of Columbia, and is separate from, and in addition to, the notification process outlined above that is mandated by Section 4305 of the Act.

The following information is provided to assist missions that intend to acquire new chancery space or perform alterations to existing chanceries in the District of Columbia:

1. Permit Requirements: Foreign missions are required to request and obtain OFM's consent for the issuance of all property-related permits. This includes the issuance of an occupancy permit, which is generally required in the

District of Columbia before a building or office may be occupied as a chancery or chancery annex. The District of Columbia's permit applications are available at www.dkra.dc.gov.

2. Zoning Approval Process: Depending on the location of the property acquired, an occupancy permit may be issued by the District of Columbia as a “matter of right” only if the property is located in one of the following zoning districts: mixed use, commercial, industrial, or waterfront. If the property is not located in one of the aforementioned zoning districts, the Foreign Missions Board of Zoning Adjustment (FMBZA) of the District of Columbia must review and approve the request of the foreign mission to locate its chancery at its proposed location. The FMBZA review process will take several months to complete and will include a public hearing. If an acquisition or alteration is determined to be subject to FMBZA review, it is recommended that foreign missions seek private legal representation to complete the approval process.

For locations outside of the District of Columbia, a mission must comply with the zoning and land-use laws and regulations and permit requirements applicable in the local jurisdiction.

3. Expansion or Alteration of Existing Properties: Depending on the scope of the project, the expansion or alteration of an existing chancery property

may also be subject to review and approval by the FMBZA. The Act requires missions to substantially comply with all local building codes and regulations, including obtaining all appropriate building permits.

The information provided above about local zoning requirements for chancery use is not exhaustive, and missions are cautioned to fully explore the zoning and land-use implications of a particular property acquisition or alteration in the District of Columbia, including whether the property is considered historic and the construction implications of such status, before concluding any contract or agreement.

Chancery Properties outside the District of Columbia

The zoning adjustment approval process associated with the location, alteration, or expansion of chancery properties outlined in Section 4306 of the Act does not apply to regulations of the local jurisdiction in locations outside the District of Columbia. However, foreign missions are expected to comply with all applicable land use and permitting regulations for chancery facilities acquired and operated outside of the District of Columbia.

CONSULAR PROPERTIES

The prior notification and approval requirements of Section 4305 of the Act apply equally to the purchase, disposition, lease, alteration, expansion, or change

of use of consular properties (“acquisitions”), office or residential, acquired by foreign missions throughout the United States. Therefore, the Chiefs of Mission are requested to transmit a copy of this note to all their career consular posts and advise them that “acquisitions” of real property obtained without OFM’s prior approval is a violation of United States law.

OFM has regional offices in Chicago, Houston, Los Angeles, Miami, New York, and San Francisco to assist consulates in complying with the requirements of the Act and with the laws and regulations of the local jurisdiction. The Department has no objection to consular posts providing written requests for approval of proposed property transactions directly to the appropriate OFM Regional Office. Information concerning each OFM regional office is located at www.state.gov/ofm/ro/index.htm.

In addition to the notification and approval requirements, consular properties are subject to the building and land-use laws and regulations of the local jurisdiction, including permit requirements. The Chiefs of Missions are reminded that consular posts are also required to request and obtain OFM’s consent for the issuance of all property-related permits.

It is the responsibility of the mission and its consular posts to be informed of, and in compliance with, the regulations of the jurisdiction in which they are

located. Inasmuch as failure to comply with local laws could result in legal and financial complications for a consular post, missions are encouraged to notify the Department and consult with OFM regarding a particular project at the earliest possible date.

INQUIRIES

The OFM's Office of Diplomatic Property, Tax, Services and Benefits may be contacted by telephone at (202) 895-3500, option 5, or by electronic mail at OFMProperty@state.gov.

Department of State,

Washington, September 6, 2011.

A handwritten signature in black ink, appearing to be a stylized 'J' or 'K' with a flourish.